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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 ALBERT GLENN,
12 CDCR #C-65516,

13 Plaintiff,

14 vs.

15 UNKNOWN,

16 Defendants.
17

Civil No. 15cv1339 BEN (DHB)

**ORDER DISMISSING CIVIL
ACTION WITHOUT PREJUDICE
FOR FAILING TO PAY FILING
FEE REQUIRED BY
28 U.S.C. § 1914(a)**

18 Plaintiff Albert Glenn, a prisoner currently incarcerated at California State
19 Prison in Lancaster, California ("LAC"), has filed an almost completely illegible
20 pleading which, as far as the Court can decipher, contains acts of retaliation and
21 unprofessional misconduct committed by unidentified prison officials at unspecified
22 times and occurring at both LAC and Calipatria State Prisons. (Docket No. 1, Compl.
23 at 1, 4.)

24 Because Plaintiff is proceeding without counsel, the Court has liberally
25 construed Plaintiff's pleading as an attempt to commence a civil action pursuant to 42
26 U.S.C. § 1983. *See Karim-Panahi v. L.A. Police Dept.*, 839 F.2d 621, 623 (9th Cir.
27 1988) (where a plaintiff appears in propria persona, the Court must construe his
28 pleadings liberally and afford plaintiff any benefit of the doubt).

I. Failure to Pay Filing Fee or Request IFP Status

All parties instituting any civil action, suit or proceeding in a district court of the United States, other than a writ of habeas corpus, must pay a filing fee of \$400.¹ See 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is granted leave to proceed *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a). See *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

Plaintiff has not prepaid the \$400 in filing and administrative fees required to commence this action, nor has he submitted a Motion to Proceed IFP. Therefore, his case is subject to immediate dismissal pursuant to 28 U.S.C. § 1914(a). And while the Court would ordinarily grant him leave to file an IFP motion pursuant 28 U.S.C. § 1915(a), it finds, for the reasons set out below, that doing so would be futile since Plaintiff is no longer entitled to that privilege.

II. 28 U.S.C. § 1915(g)'s "Three-Strikes" Bar

"All persons, not just prisoners, may seek IFP status." *Moore v. Maricopa Cnty. Sheriff's Office*, 657 F.3d 890, 892 (9th Cir. 2011). "Prisoners," however, "face an additional hurdle." *Id.* In addition to requiring prisoners to "pay the full amount of a filing fee" in installments as provided by 28 U.S.C. § 1915(a)(3)(b), the Prison Litigation Reform Act ("PLRA") amended section 1915 to preclude the privilege to proceed IFP in cases where the prisoner:

... has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief can be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g). "This subdivision is commonly known as the 'three strikes' provision." *Andrews v. King*, 398 F.3d 1113, 1116 n.1 (9th Cir. 2005). "Pursuant to §

¹ In addition to the \$350 statutory fee, all parties filing civil actions on or after May 1, 2013, must pay an additional administrative fee of \$50. See 28 U.S.C. § 1914(a), (b); Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, eff. May 1, 2013. However, the additional \$50 administrative fee is waived if the plaintiff is granted leave to proceed IFP. *Id.*

1 1915(g), a prisoner with three strikes or more cannot proceed IFP.” *Id.*; *see also*
 2 *Andrews v. Cervantes*, 493 F.3d 1047, 1052 (9th Cir. 2007) (under the PLRA,
 3 “[p]risoners who have repeatedly brought unsuccessful suits may entirely be barred
 4 from IFP status under the three strikes rule[.]”). The objective of the PLRA is to
 5 further “the congressional goal of reducing frivolous prisoner litigation in federal
 6 court.” *Tierney v. Kupers*, 128 F.3d 1310, 1312 (9th Cir. 1997).

7 “Strikes are prior cases or appeals, brought while the plaintiff was a prisoner,
 8 which were dismissed on the ground that they were frivolous, malicious, or failed to
 9 state a claim,” *King*, 398 F.3d at 1116 n.1 (internal quotations omitted), “even if the
 10 district court styles such dismissal as a denial of the prisoner’s application to file the
 11 action without prepayment of the full filing fee.” *O’Neal v. Price*, 531 F.3d 1146,
 12 1153 (9th Cir. 2008). Once a prisoner has accumulated three strikes, he is prohibited
 13 by section 1915(g) from pursuing any other IFP action in federal court unless he can
 14 show he is facing “imminent danger of serious physical injury.” *See* 28 U.S.C.
 15 § 1915(g); *Cervantes*, 493 F.3d at 1051-52 (noting section 1915(g)’s exception for
 16 IFP complaints which “make[] a plausible allegation that the prisoner faced
 17 ‘imminent danger of serious physical injury’ at the time of filing.”).

18 **III. Application to Plaintiff’s Case**

19 As an initial matter, the Court has reviewed Plaintiff’s pleading and has
 20 ascertained that it contains no “plausible allegation” to suggest Plaintiff faced
 21 imminent danger of serious physical injury at the time of filing. *See Cervantes*, 493
 22 F.3d at 1055. While far from clear, it appears Plaintiff seeks to challenge the
 23 “professional[ism] of staff,” and unspecified acts of retaliation “driven by
 24 homosexual wardens.” (Compl. at 3.)

25 Additionally, even if Plaintiff had filed a motion to proceed IFP, the Court
 26 notes that Plaintiff is not entitled to the IFP privilege.

27 A court “may take notice of proceedings in other courts, both within and
 28 without the federal judicial system, if those proceedings have a direct relation to

1 matters at issue.” *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (quoting
 2 *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)); *see also United*
 3 *States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248
 4 (9th Cir. 1992).

5 Thus, this Court takes judicial notice that Plaintiff Albert Glenn, CDCR Inmate
 6 #C-65516, has had at least three prior civil actions or appeals dismissed on the
 7 grounds that they were frivolous, malicious, or failed to state a claim upon which
 8 relief may be granted. They include:

- 9 (1) *Glenn v. Fox*, Central Dist. Cal. Civil Case No. 2:02-cv-09126-UA-MLG
 10 (Dec. 20, 2002) (Order denying IFP and dismissing case based on
 11 absolute judicial immunity)² (Doc. No. 2) (strike one);
- 12 (2) *Glenn v. Johnson*, Central Dist. Cal. Civil Case No. 2:03-cv-00664-UA-
 13 MLG (Feb. 10, 2003 Order denying IFP and dismissing complaint for
 14 lack of jurisdiction) (Doc. No. 2), and (Aug. 5, 2003 Order denying leave
 15 to appeal IFP, certifying that appeal would be frivolous pursuant to 28
 16 U.S.C. § 1915(a)(3)) (Doc. No. 6) (strike two); and
- 17 (3) *Glenn v. Ryan*, Southern Dist. Cal. Civil Case No. 3:03-cv-00414-L-POR
 18 (May, 9, 2003 Order denying IFP and dismissing action for failing to
 19 state a claim pursuant to 28 U.S.C. § 1915A(b)(1) (Doc. No. 3), and
 20 (Nov. 19, 2003 Certified copy of judgment, Ninth Circuit Court Appeal
 21 No. 03-56288, Order dismissing appeal for lack of jurisdiction) (Doc.
 22 No. 11) (strike three).

23 Accordingly, because Plaintiff has, while incarcerated, already accumulated
 24 three “strikes” as defined by section 1915(g), and he fails to make a plausible
 25 allegation that he faced imminent danger of serious physical injury at the time he filed
 26

27 ² When absolute immunity applies, claims for damages are frivolous. *See Baker*
 28 *v. King Cnty. Prosecutor’s Office*, 981 F.2d 1257 (9th Cir. 1992); *see also Mullis v. U.S.*
Bankr. Court, 828 F.2d 1385, 1394 (9th Cir. 1987) (finding claims for damages against
 federal judge entitled to absolutely immunity patently frivolous).

1 this case, he is not entitled to the privilege of proceeding IFP. *See Cervantes*, 493
 2 F.3d at 1055; *Rodriguez*, 169 F.3d at 1180 (noting that 28 U.S.C. § 1915(g) “does not
 3 prevent all prisoners from accessing the courts; it only precludes prisoners with a
 4 history of abusing the legal system from continuing to abuse it while enjoying IFP
 5 status”); *see also Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984) (“[C]ourt
 6 permission to proceed IFP is itself a matter of privilege and not right.”).

7 **IV. Conclusion and Order**

8 For the reasons set forth above, the Court hereby:

9 (1) **DISMISSES** this action sua sponte without prejudice for failing to
 10 prepay the \$400 civil filing fee required by 28 U.S.C. § 1914(a); and

11 (2) **CERTIFIES** that an IFP appeal from this Order would be frivolous and
 12 therefore, not taken in good faith pursuant to 28 U.S.C. § 1915(a)(3). *See Coppedge*
 13 *v. United States*, 369 U.S. 438, 445 (1962); *Gardner v. Pogue*, 558 F.2d 548, 550 (9th
 14 Cir. 1977) (indigent appellant is permitted to proceed IFP on appeal only if appeal
 15 would not be frivolous).

16 The Clerk shall close the file.

17 **IT IS SO ORDERED.**

18
 19 DATED: September 12, 2015


 HON. ROGER T. BENITEZ
 United States District Judge